



March 30, 2000

Ms. Katherine Minter Cary  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2000-1241

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133995.

The Office of the Attorney General (the "OAG") received a request for a copy of a handbook compiled by the Gambling Prosecution Unit ("GPU") of the OAG's Special Crimes Division. You have submitted to our office responsive information which you have labeled Exhibit 3. Exhibit 3 is divided into four sections: A, B, C, and D. You indicate that you have already released the information you have submitted as sections B and D, and have released all but one page of information in section A. You claim that the single page in section A, along with the entirety of section C, is excepted from disclosure under section 552.108 of the Government Code. We have considered the argument you make and the exception you claim, and have reviewed the submitted information.

Section 552.108(b) of the Government Code excepts from disclosure internal records or notations of a law enforcement agency or prosecutor that are maintained for internal use in matters relating to law enforcement or prosecution if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or
- (3) the internal record or notation:
  - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

- (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You assert that the GPU is a “law enforcement agency” for purposes of the Public Information Act. In an earlier decision, this office examined whether the Crime Strike Force unit of the Office of the Attorney General was a “law enforcement agency” within the meaning of the predecessor statute to section 552.108. Open Records Decision No. 126 (1976). Finding that the unit “assists the Attorney General in performing his law enforcement duties [under various statutes],” this office concluded that the Crime Strike Force unit was a “law enforcement agency” for purposes of the Public Information Act. *Id.* at 5. You explain that the GPU is “part of a grant-funded program intended to assist local law enforcement agencies in the prosecution of gambling offenses . . . . The unit assists in and conducts investigations . . . and . . . prosecutions of illegal gaming, especially with an eye to establishing whether the use of the illegal gaming devices renders the establishment where they are used a ‘nuisance’ for purposes of the Penal Code and for purposes of the asset seizure and forfeiture provisions of Chapter 59 of the Code of Criminal Procedure.” Having reviewed your argument, we conclude that the GPU is a “law enforcement agency” for purposes of the application of section 552.108 of the Government Code. We now examine the applicability of section 552.108 to the information you have submitted.

You indicate that the single marked document in Exhibit 3, section A, was prepared for criminal litigation by an assistant attorney general. We agree that the single marked document in Exhibit 3, section A, may be withheld from disclosure under section 552.108(b)(3)(A).

You argue that Exhibit 3, section C, is protected from required disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution” . . . when its release “would interfere with law enforcement and crime prevention.” Gov’t Code § 552.108(b)(1); Open Records Decision No. 531 at 2 (1989). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986). Whether disclosure of particular records will interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). You contend that the release of the information in Exhibit 3, section C, would reveal law enforcement techniques used by undercover investigators. We agree that the release of such information would interfere with law enforcement or crime prevention. Accordingly, you may withhold from disclosure the information in section C under section 552.108(b)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/ljp

Ref: ID# 133995

Encl. Submitted documents

cc: Ms. Paula Yost  
P.O. Box 383  
Yantis, Texas 75497  
(w/o enclosures)